

Message Text

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ACTION VO-03

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC PRIORITY 8540

LIMITED OFFICIAL USE SECTION 1 OF 2 MANILA 11735

E.O. 11652: N/A

TAGS: CIVS

SUBJECT: ILLEGITIMATE CHILDREN OF FATHERS UNDER SECTION

101(B)(1)(B)22CFR 42.1, NOTE 2.3

REF: STATE 188437

1. ADJUDICATION OF "CHILD" STATUS, WITH RESPECT TO TITLES I AND II OF THE ACT, IS HANDLED AT THIS POST BY INS REPRESENTATIVE. CONSOFFS ARE, OF COURSE, INVOLVED INsofar AS OCCASIONS ARISE TO QUESTION FAMILY RELATIONSHIP DURING PROCESSING OF IMMIGRANT VISAS. ALTHOUGH REFTTEL REFERS ONLY TO TITLES I AND II, CONSOFFS WHO DEAL WITH TITLE III OF ACT ALSO HAVE CONTRIBUTED VIEWS ON PROPOSAL BEFORE HOUSE JUDICIARY COMMITTEE. ALTHOUGH NUMBER OF CASES NOW ADJUDICATED IS LOW, PROPOSAL MIGHT WELL OPEN PANDORA'S BOX OF NEW ANGLES OF POSSIBLE FRAUD. IT IS EASY ENOUGH TO SAY THAT SAFEGUARD PROVISIONS MUST BE ESTABLISHED. BUT IN PRACTICE, PRESSURE IS ALWAYS UPON INS OFFICERS AND CONSOFFS TO EXPLAIN WHY THEY HAVE DOUBTS ABOUT RELATIONSHIP AND NOT REALLY UPON ALLEGED PARENT(S) TO PROVE PARENTAGE. WE CANY SAY OVER AND OVER THAT BURDEN OF PROOF IS UPON APPLICANT OR PARENTS, BUT IT NEVER WORKS OUT THAT WAY. WHEN CONGRESSIONAL AND MEDIA PRESSURE IS INTENSIFIED, NO MATTER HOW LITTLE THE PROOF PRESENTED, REAL BURDEN OF PROOF IS SHIFTED TO ADJUDICATING OFFICER. HE IS FORCED TO PROVE A NEGATIVE, EVEN THOUGH NO POSITIVE PROOF HAVE BEEN OFFERED. THIS IS ESPECIALLY TRUE IN PHILIPPINES, WHERE AMERICANS HAVE BEEN FATERING ILLEGITIMATE CHILDREN IN SIGNIFICANT NUMBERS SINCE 1898 AND WHERE FRAUD IN ALL ASPECTS OF IMMIGRATION AND NATIONALITY PRACTICE IS SO COMMON THAT MANY OBSERVERS CONSIDER IT MORE THE RULE THAN THE

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EXCEPTION. IN FIRST SEVEN MONTHS OF 1976 CONSEC'S FRAUD UNIT

HAS RECEIVED 209 REQUESTS FOR VISA INVESTIGATIONS. RATE OF FRAUD DISCOVERED (REPEAT DISCOVERED) IS RUNNING 43 PERCENT. FRAUD IS SUCH A BIG AND IMPORTANT BUSINESS THAT WE MUST BE CONTINUALLY ON GUARD FOR NEW METHODS USED. THE DEFENSE IS ALWAYS BEHIND THE OFFENSE. ALMOST ANY DOCUMENT REQUESTED BY ADJUDICATORS CAN BE PRODUCED IN SHORT TIME BY APPLICANTS. THEREFORE "SAFEGUARDS" ESTABLISHED NOW WOULD LIKELY BE QUICKLY OUTSMARTED.

2. FOLLOWING IS INFO REQUESTED IN PARAS 4 THROUGH 8 OF REFTEL:

(4) PROBABLY 12 TO 15 IN LAST YEAR. FIGURES ARE UNDOUBTEDLY LOW BECAUSE OF TOUGH STANDARDS IMPOSED BY NATION VS ESPERDY AND ANDRADE VS ESPERDY DECISIONS.

(5) ONLY EVIDENCE ACCEPTED BY INS REPRESENTATIVE HERE IS CONTEMPORANEOUS BIRTH CERTIFICATE. UNDER PHILIPPINE LAW THIS MUST BE FILED WITHIN 30 DAYS OF BIRTH OR IS DESIGNATED "DELAYED." LATER CERTIFICATES ARE NOT RPT NOT ACCEPTED BECAUSE ELEMENT OF FRAUD IS GEOMETRICALLY MORE LIKELY THE LONGER AFTER BIRTH THAT CERTIFICATION IS MADE. LOCAL ADMINISTRATIVE ADJUDICATION HAS BEEN MADE WHEN CERTIFICATE ISSUED. JUDICIAL ADJUDICATION IS MADE ONLY FOR AMENDED CERTIFICATES.

(6) PERCENTAGE OF FRAUD IN CASES MENTIONED IN PARA (4) IS PROBABLY LOWER BECAUSE MORE NEARLY ACCURATE CONTEMPORANEOUS BIRTH CERTIFICATE IS REQUIRED. WHEN DELAYED CERTIFICATES OF SECONDARY EVIDENCE MUST BE CONSIDERED, FRAUD RATE INCREASES NOTABLY.

(7) CIVIL CODE OF THE PHILIPPINES, ARTICLE 269: "ONLY NATURAL CHILDREN CAN BE LEGITIMATED. CHILDREN BORN OUTSIDE WEDLOCK OF PARENTS WHO, AT THE TIME OF THE CONCEPTION OF THE FORMER, WERE NOT DISQUALIFIED BY ANY IMPEDIMENT TO MARRY EACH OTHER, ARE NATURAL."

ARTICLE 276: "A NATURAL CHILD MAY BE RECOGNIZED BY THE FATHER AND MOTHER JOINTLY, OR BY ONLY ONE OF THEM"

ARTICLE 278: RECOGNITION SHALL BE MADE IN THE RECORD OF BIRTH, A WILL, A STATEMENT BEFORE A COURT OF RECORD, OR IN ANY AUTHENTIC WRITING."

ARTICLE 279: "A MINOR WHO MAY NOT CONTRACT MARRIAGE WITHOUT PARENTAL CONSENT CANNOT ACKNOWLEDGE A NATURAL CHILD, UNLESS THE PARENT OR GUARDIAN APPROVES THE ACKNOWLEDGEMENT, OR UNLESS THE RECOGNITION IS MADE IN A WILL."

ARTICLE 281: "A CHILD WHO IS OF AGE CANNOT BE RECOGNIED LIMITED OFFICIAL USE

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WITHOUT HIS CONSENT."

WHEN THE RECOGNITION OF A MINOR DOES NOT TAKE PLACE IN A RECORD OF BIRTH OR IN A WILL, JUDICIAL APPROVAL SHALL BE NECESSARY.

A MINOR CAN IN ANY CASE IMPUNG THE RECOGNITION WITHIN FOUR YEARS FOLLOWING THE ATTAINMENT OF HIS MAJORITY.Z

ARTICLE 283: "IN ANY OF THE FOLLOWING CASES, THE FATHER IS OBLIGED TO RECOGNIZE THE CHILD AS HIS NATURAL CHILD:

KQL IN CASES OF RAPE, ABDUCITION OR SEDUCTION, WHEN THE

PERIOD OF THE OFFENSE COINCIDES MORE OR LESS WITH THAT OF THE CONCEPTION;

(2) WHEN THE CHILD IS IN CONTINUOUS POSSESSION OF STATUS OF A CHILD OF THE ALLEGED FATHER BY THE DIRECT ACTS OF THE LATTER OR OF HIS FAMILY;

(3) WHEN THE CHILD WAS CONCEIVED DURING THE TIME WHEN THE MOTHER COHABITED WITH THE SUPPOSED FATHER;

(4) WHEN THE CHILD HAS IN HIS FAVOR ANY EVIDENCE OR PROOF THAT THE DEFENDANT IS HIS FATHER."

(8) INS MANILA, AND CONSOFFS RECOMMEND HOLDING LINE ON

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC PRIORITY 8541

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REQUIREMENT OF TIMELY-FILED CONTEMPORANEOUS BIRTH CERTIFICATE. ANYTHING LESS, INCLUDING EVEN THE COSTLY AND TIME-CONSUMING PROCESS OF FIELD INVESTIGATION BY OUR OWN PERSONNEL, IS CONSIDERABLY MORE OPEN TO FRAUD. EVEN THE CONTEMPORANEOUS B/C IS SOME NINE MONTHS "AFTER THE FACT" AND THEREFORE LIABLE TO MEMORY LAPSES AS WELL AS INTENTIONAL MANIPULATION OF THE TRUTH. MANY OF THE CHILDREN INVOLVED ARE RESULT OF TRANSIENT LIAISONS -- MORE OFTEN THAN NOT OF AMERICAN CITIZEN MALE AND FILIPINO FEMALE -- IN TOWNS NEAR TWO LARGE U.S. MILITARY BASES MALE WHO IS AVAILABLE AID/OR WILLING TO CLAIM PATERNITY AT TIME OF BIRTH MAY NOT BE SAME MALE WHO WAS THE MOTHER'S SEXUAL PARTNER NINE MONTHS BEFORE. WOMEN MAY HAVE HAD NUMBER OF POTENTIAL SIRES FOR HER CHILD DURING POSSIBLE PERIOD OF CONCEPTION BUT THESE MAY NOT BE AWARE OF ONE ANOTHER'S EXISTENCE. YOUNG AMERICAN MEN, OFTEN NAIVE IF NOT INNOCENT, ARE OFTEN WILLING OR EAGER TO CLAIM PARENTAGE ALLEGED BY WOMAN WHO HAS BEFRIENDED THEM FAR FROM HOME. THEY MAY REALLY LOVE THE WOMAN, AND VERY FEW WILL NOT LOVE A NEW BABY. FATHERING CHILD IS A TANGIBLE PROOF OF MASCULINITY FOR AN INSECURE YOUNG MAN -- AMERICANS SHARE "MACHO" COMPLEX

WITH OTHER CULTURES. MANY OF THESE YOUNG MEN WANT TO BELIEVE THEY WERE WOMAN'S FIRST AND ONLY LOVE PARTNER AND CLAIMING PARENTAGE IS LOGICAL FOLLOW-UP TO THIS SELF-DELUSION. AT SOMETIME THERE MAY BE REASONS WHY MAN, WHETHER REAL FATHER OR NOT, CANNOT OR WILL NOT MARRY MOTHER OF CHILD, BUT WANTS THE CHILD TO GET VISA.

3. A. ANSWERS TO PARAGRAPHS 4 THROUGH 7 BASED ON PRESENT SITUATION IN PHILIPPINES WHERE LITTLE INCENTIVE EXISTS TO MAKE MIS-

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REPRESENTATIONS ON BIRTH CERTIFICATES WITH RESPECT TO PATERNITY OF CHILD. IF DEFINITION OF CHILD AMENDED TO PERMIT NATURAL FATHER TO FILE IR-2 OR P2-2 PETITION FOR ILLEGITIMATE CHILD, COMPLETELY DIFFERENT SITUATION WOULD EXIST.

B. PROBLEM WOULD CENTER, OF COURSE, ON PROOF OF PATERNITY. BEST PROOF WOULD BE BIRTH CERTIFICATE, FILED CONTEMPORANEOUSLY

INDICATING FATHER'S NAME, AND NOTING BIRTH WAS ILLEGITIMATE. IN ACTUAL PRACTICE, NATURAL MOTHER (OR SOMEONE, E.G., MIDWIFE, ACTING ON HER BEHALF) CAN PROVIDE DATA FOR BIRTH CERTIFICATE (INCLUDING NAME OF ALLEGED FATHER) WITHOUT ALLEGED FATHER'S KNOWLEDGE. BIRTH CERTIFICATES IN BEST OF CASES, THEREFORE, DO NOT PROVIDE RELIABLE DATA TO ESTABLISH PATERNITY.

C. UP UNTIL NOW, NATURAL MOTHERS HAVE BEEN UNAWARE OF POTENTIAL MISREPRESENT PARENTAGE DATA, AND MORE OFTEN THAN NOT WILL HAVE OBTAINED A BIRTH CERTIFICATE WHICH DOES NOT INCLUDE NAME OF FATHER. DOCUMENT CANNOT BE AMENDED EXCEPT THRU JUDICIAL PROCESS WHICH INCLUDES REQUIREMENT THAT ALLEGED FATHER BE UNDER COURT'S JURISDICTION (I.E. IN PHILIPPINES). IF PROPOSAL IS MADE LAW, MOTHER WITH INTENT TO MISREPRESENT FACTS CAN EASILY OBTAIN DELAYED BIRTH CERTIFICATE, SHOWING ALLEGED FATHER'S NAME, IN ANOTHER COMMUNITY. LOCAL CIVIL REGISTRARS ISSUE DELAYED BIRTH CERTIFICATES WITHOUT REQUIRING RELIABLE PROOF OF PERTINENT FACTS.

D. VARIATION OF THEM IS CLAIM THAT ORIGINAL BIRTH CERTIFICATE IS LOST (OR COPY NEVER PICKED UP) OR THAT LOCAL CIVIL REGISTRY RECORDS HAVE BEEN DESTROYED BY TYPHOON, WAR, ETC. CONSULAR OFFICERS WOULD HAVE GREAT DIFFICULTY IN GIVING CREDENCE TO AFFIDAVITS IN LIEU OF BIRTH CERTIFICATES.

E. SCENARIOS OF FRAUD OUTLINED ABOVE ARE, OF COURSE, POINTLESS UNLESS NATURAL FATHER COOPERATES BY FILING PETITION. OUR EXPERIENCE IN HANDLING THOUSANDS OF CASES FROM CLARK AND SUBIC INDICATES NATURAL MOTHER CAN EASILY EXERT PRESSURE ON SERVICEMAN WHO WOULD COOPERATE OUT OF DESIRE TO BE HELPFUL (AT LITTLE EXPENSE), FINANCIAL GAIN, OR COERCION.

F. REACTIONS OF NATURAL MOTHERS TO GIVING UP CHILDREN, WILL OF COURSE, VARY ACCORDING TO CULTURES AND TO SUBCULTURES AND INDIVIDUALS THEREIN. IN MANY SITUATIONS THAT WILL BE ENCOUNTERED

IN PHILIPPINES (SEE PARA 2, ITEM 8 ABOVE), THERE MAY BE SURPLUS OF
UNWANTED CHILDREN AND LESS-THAN-USUAL MATERNAL ATTACHMENT TO CHILD.
BECAUSE OF SHORTAGE OF ADOPTABLE CHILDREN IN U.S., THERE IS
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ALREADY GREAT INTEREST COMING FROM U.S. IN FILIPINO CHILDREN
AVAILABLE FOR ADOPTION. PROPOSAL OF THIS SORT WOULD UNDOUBTEDLY
CONTRIBUTE TO POSSIBLE BLACKMARKET IN BABIES. THERE WOULD BE
ADDITIONAL MOTIVES, INCLUDING PROFIT, FOR FRAUDULENT CLAIM THAT
MAN WAS NATURAL FATHER OF A BABY UNWANTED BY MOTHER. WE CAN
EVEN FORESEE PREARRANGED "BUSINESS" TRIPS FOR PURPOSE OF CLAIMING
CHILD NINE MONTHS LATER.

G. IN EASTERN HEMISPHERE CASES, NATURAL MOTHER ACQUIRES NO
VISA BENEFITS FROM HER CHILD WHO IMMIGRATES TO U.S. UNTIL CHILD
BECOME U.S. CIT AND FILES IR-5 PETITION UPON REACHING AGE 21. IN
WESTERN HEMISPHERE, HOWEVER, NATURAL MOTHER WOULD NEED ONLY HAVE
PROOF (FORM I-550) THAT HER CHILD HAS BEEN LAWFULLY ADMITED AS
PERMANENT RESIDENT TO ACQUIRE EXEMPTION TO LABOR CERTIFICATION
REQUIREMENTS. MOTHER WOULD THEN APPLY FOR IV TOGETHER WITH HER
SUBSEQUENTLY-ACQUIRED LEGAL HUSBAND AND CHILDREN.

4. ALTHOUGH REFTTEL DEALS ONLY WITH VISAS, MANY OF PROBLEMS
ANTICIPATED BY POST AR ALREADY BEING EXPERIENCED IN ADJUDICATING
PARENTAGE UNDER TITLE III OF THE ACT. VO MAY WISH TO CHECK WITH
PPT FOR ITS EXPERIENCE IN THIS RESPECT.

5. AMCONSUL CEBU HAS NO ADDITIONAL CONTRIBUTION.
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